In the High Court of Punjab and Haryana at Chandigarh.

Civil Writ Petition No.2359 of 1994.

Date of decision:26-5-2008

The Haryana State Co-operative Land Development Bank Ltd., Chandigarh.

...Petitioner.

Versus

Vijender Singh Ahlawat and another.

...Respondent.

...

Coram: Hon'ble Mr. Justice K. C. Puri.

...

Present: Mr. Ranjit S. Chawla Advocate for the petitioner.

Mr. R.K.Malik, Senior Advocate with Mr. Parveen Kumar, Advocate for respondent No.1.

...

K. C. Puri, J.

Judgment.

The petitioner has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution for the issuance of a writ in the nature of Certiorari for quashing award dated 8.12.1993, Annexure P-4, passed by respondent No.2.

The brief fact, culminating into filing of this Civil Writ Petition are that respondent No.1, who was working as a Clerk at

P.L.D.B, Naraingarh, embezzled an amount of Rs.2,500/- and FIR No.70 under Section 408 IPC was registered on 21.8.1976 and respondent was arrested. The respondent No.1 was placed under suspension by the petitioner-Bank. The Chief Judicial Magistrate, Ambala City awarded punishment of one year and and a fine of Rs.500/- on 3.3.1982. Respondent No.1 filed an appeal against the said order which was dismissed by Sessions Judge, Ambala on 5.1.1983. The respondent filed Revision Petition before this Court. This Court, vide order dated 9.7.1984, reduced the sentence of respondent No.1 to that already undergone by him but enhanced the amount of fine to Rs.3,000/-. Since respondent No.1 did not file any further appeal before the Hon'ble Supreme Court of India, the said order of this Court attained finality.

Taking cognizance of the entire matter, the petitioner served a Show Cause Notice on respondent No.1 on 24.4.1982 to show cause as to why his services be not terminated. The respondent sent reply to the Show Cause Notice on 30.4.1982. The petitioner-Bank considered the reply of respondent No.1 and found the same unsatisfactory. Consequently, the services of respondent No.1 were terminated on 7.8.1982. The respondent No.1 filed an appeal before the Assistant Registrar, Karnal against the order of termination dated 7.8.1982 who while exercising the powers of Registrar, Co-operative Societies, Haryana vide order dated 31.3.1983, set aside the order of

Bank dated 7.8.1982 and ordered the retention of respondent No.1 in the service of the Bank. These orders have no effect on the termination of respondent No.1 because the appeal before the Sessions Judge was already dismissed on 5.1.1983, prior to the order of the Assistant Registrar dated 31.3.1983.

It has further been pleaded by the petitioner that respondent No.1 had no right to join the service of the petitioner in view of provisions of Rule 9.2(d) of the Staff Rules which is reproduced hereunder:-

> "9.2. General conditions relating to appointment.
>
> (a) to © xx xx xx
>
> (d) No person shall be appointed to the service if he has previously been dismissed from service of any Government department, or any other institution or has been convicted by court of law as a result of some act of dishonesty and moral turpitude."

It is further pleaded that although this Court did not relegate respondent No.1 to the remedy of the Industrial Disputes Act, yet the respondent No.1 filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 after a lapse of 10 years of his termination. The Labour Court, vide its impugned award dated 31.3.1983, set aside the order dated 7.8.1982 and ordered that respondent No.1 be permitted to continue in service of the Bank. This

order of the Labour Court has been termed by the petitioner as wrong, illegal, null and void, without jurisdiction on various grounds enumerated in the Civil Writ Petition.

Respondent No.1 filed detailed written statement, resisting the claim of the petitioner. It has been pleaded that against his dismissal, he filed statutory appeal before the Registrar, Co-operative Societies, Haryana, which was transferred to the Deputy Registrar, Co-operative Societies, Karnal who vide his order dated 31.3.1983 set aside his dismissal order. The said order was not challenged by the petitioner and has, thus, become final. As such, the respondent No.1 was rightly held entitled to the salary for the said period, by the Labour Court. There was no infirmity in the impugned order of Labour Court. After the order dated 31.3.1983 passed by the Registrar had become final, no fresh dismissal order was passed nor he was allowed to continue in service by the petitioner-Bank and as such the petitioner will be deemed to be in service for all intents and purposes.

Respondent No.1 has further pleaded that Rule 9.2 applies to fresh appointment. Once a person had been employed, his services could only be dismissed after passing dismissal order. In the instant case, after the dismissal order dated 7.8.1982 was set aside on 31.3.1983, no fresh dismissal order was passed and he will be deemed to be in service. Since he was not reinstated, so he filed Civil Writ Petition No.903 of 1989 in this Court for his reinstatement in service

with all consequential benefits. This Court relegated him to Civil Court. Labour Court was the efficacious remedy in comparison to Civil Court, so he filed an application under Section 33-C(2) of the Industrial Disputes Act. He supported the impugned order being legal and in accordance with law.

I have heard arguments addressed by the counsel for the petitioner and the counsel for respondent No.1 and have carefully gone through the record of the case.

The learned counsel for the petitioner has submitted that the workman has filed an application under Section 33-C(2) of the Industrial Disputes Act for claiming an amount of Rs.6,18,102/- as arrears of salary. The learned Labour Court by exceeding its jurisdiction has passed the impugned order. It is submitted that admittedly a criminal case was registered against the workman, now respondent, for embezzlement of the amount. The workman, after trial, was convicted by the Chief Judicial Magistrate, Ambala City and was awarded punishment of rigorous imprisonment for one year and to pay a fine of Rs.500/- vide judgment dated 3.3.19082. The workman preferred an appeal against the said judgment and his appeal was ultimately dismissed vide judgment dated 5.1.1983. The management, while taking into account the judgment of Criminal Court convicting the workman dismissed him from service vide order dated 7.8.1982. The workman preferred an appeal before the competent authority and

the Deputy Registrar, Co-operative Societies, Karnal vide order dated 31.3.1983 accepted the appeal of the workman and set aside the order dated 7.8.1982 vide which the workman was dismissed from service.

The sole ground for setting aside the order of dismissal dated 7.8.1982 was that appeal against the judgment dated 3.3.1982 convicting the workman was pending. That judgment is a nullity as the said fact is wrong on the face of it. The appeal of the management was dismissed vide judgment dated 5.1.1983 and the workman approached the Hon'ble High Court against the judgment dated 5.1.1983 passed by Sessions Judge, Ambala and the High Court passed the following order on 9.7.1984:-

> “Sentence reduced to that of undergone and fine enhanced to Rs.3000/-. As and when realised to be paid to P.L.D.B”.

So, the conviction of workman has been maintained by the High Court also. It is settled law that once the workman has been convicted by a Criminal Court, moreso, for an offence under Section 408 IPC for an embezzlement, which offence involves moral turpitude, in that case, the workman has no right to remain in service. The learned Labour Court in spite of having knowledge of all the facts, accepted the application under Section 33-C(2) vide order dated 8.12.1993. Since the order dated 31.3.1983 is based upon wrong facts, as such the same is liable to be ignored. Otherwise also, the High Court in writ jurisdiction has ample power to dispense justice to the parties and the

convicted workman Vijender Singh Ahlawat is not entitled to any salary since he has been dismissed from service vide order dated 7.8.1982 passed by the management.

In reply to the above noted submissions, Shri R.K.Malik, Senior Advocate, has submitted that the order of dismissal dated 7.8.1982 has been set aside by a competent authority vide order dated 31.3.1983 passed by the Deputy Registrar, Cooperative Societies, Karnal. That order has not been set aside by any competent Court. So, in these circumstances, the order of the Labour Court granting the amount of salary is well reasoned and cannot be set aside.

So far as the admitted facts of the case are concerned, the workman was working as a Clerk in P.L.D.B, Naraingarh. A case for embezzlement of Rs.2,500/- was registered against him vide FIR No.70 dated 21.8.1976 under Sections 406/408 IPC. The workman was arrested and consequently placed under suspension. Ultimately, after trial, Chief Judicial Magistrate vide judgment dated 3.3.1982 awarded punishment of one year and fine of Rs.500/-. Show cause notice dated 30.4.1982 was issued to the workman as to why his services be not terminated. The workman/respondent No.1 filed reply and the same was found to be unsatisfactory. His services were terminated on 7.8.1982. It is also not disputed that the workman preferred an appeal against his conviction dated 3.3.1982 and his appeal was dismissed by the Sessions Judge, Ambala vide judgment dated 5.1.1983. It is also

not disputed that the workman preferred an appeal against the order of dismissal and that appeal was accepted vide order dated 31.3.1983. Respondent No.1 approached the Hon'ble High Court in a Criminal Revision against the order of Sessions Judge dated 5.1.1983 and the High Court maintained the conviction of workman but his sentence was reduced to that of undergone but the fine was enhanced to Rs.3,000/- which, on realization, was payable to the Bank.

The workman/ respondent No.1 approached the Government in the year 1988 for his reinstatement even after his conviction was maintained but the Government vide letter dated 17.8.1988, Annexure P-1, relying upon Staff Service Rule No.9.2(d) of the Bank rejected the request of respondent No.1. The workman filed Civil Writ Petition No.903 of 1989 for his reinstatement in service with all consequential reliefs but that writ petition was disposed of vide judgment dated 23.1.1989 with the following order:-

"Present: Shri J.S.Maanipur, Advocate.

The petitioner, if so advised, may claim his relief through the Civil Court.

Dismissed.

Sd/- I. S. Tiwana, Judge.

Jan.23,1989. Sd/- M.R.Agnihotri, Judge."

The workman instead of approaching the Civil Court knocked the door of Labour Court, Rohtak. Vide impugned order

dated 8.12.1993, the Labour Court accepted the application under Section 33-C(2) of the Industrial Disputes Act and ordered the management to pay Rs.3,25,000/-. The said order of Labour Court has been challenged in the present writ petition.

Shri R.K.Malik, learned counsel for the workman has conceded the fact that after conviction of the workman, under Section 408 IPC, the employee has no legal right to remain in service. The only grievance ventilated by him is that order dated 7.8.1982 dismissing him from service has been set aside by the Deputy Registrar on 31.3.1983 and as such the workman shall be deemed to be in service. The said argument cannot be accepted. The workman kept quiet from the year 1983 till 1988 and he then moved the Government for his reinstatement. The Government, vide letter dated 17.8.1988, Annexure P-1, clearly mentioned that since the workman has been finally convicted by the High Court,as such according to Staff Service Regulation No.9.2(d) of the Bank, the workman cannot be reinstated. The petitioner challenged the said order in Civil Writ Petition No.903 of 1989 and the Division Bench vide order dated 23.1.1989 dismissed the writ petition giving the workman liberty to approach the Civil Court. The workman has not approached the Civil Court and has simply filed an application under Section 33-C(2) of the Industrial Disputes Act claiming the amount of salary. The workman cannot have the benefit of the order dated 31.3.1983 passed by the

Deputy Registrar, Co-operative Societies, Karnal as the same is based on the assumption that the appeal against the order dated 3.3.1982 convicting him is pending but the fact remains that prior to 31.3.1983, i.e. on 5.1.1983, the appeal was already dismissed by the Sessions Judge, Ambala. So, the order dated 31.3.1983 which is passed on wrong facts is liable to be ignored. The relevant portion of the appeal is re-produced as under:-

> "Therefore, after hearing both the parties and after perusing the facts on record, rulings cited and Bank Employees Service Rules, it has become clear that the Bank has dismissed the services of the official (applicant) without conducting any departmental enquiry. They have not kept in view the facts submitted by the official (applicant) in reply to the show cause notice, in which he had stated that till the decision of his appeal, his services may not be dismissed. This fact is also evident from the judgment delivered by the Rajasthan High Court dated 27.3.1982, that till the final decision regarding the punishment, any employee cannot be dismissed from service. Therefore, I hereby set aside the order dated 7.8.1982 passed by the Bank and I order that the applicant be permitted to continue in service of the Bank."

The offence for which the workman has been convicted is

regarding embezzlement of the funds of the Bank. His conviction has been maintained. The offence involves moral turpitude. No organization can be directed to keep a dishonest employee in service.

In view of the above discussion, the impugned order dated 8.12.1993, Annexure P-4, does not sustain the test of legal scrutiny and the same stands set aside. It is held that the workman shall be deemed to be dismissed from service from 7.8.1982 and he is not entitled to any claim any salary.

This writ petition stands allowed.

May 26th,2008. (K. C. Puri)
Jaggi Judge